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No. 43.

1st Session, 8th Parliament, 27th Victoria, 1863

BILL.

An Act respecting Insolvency.

Received and read first time, Tuesday, 1st
September, 1863.

Second reading, Wednesday, Sept. 2, 1863

Hon. Mr. ABBOTT.

QUEBEC:

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ROSE & LEMIEUX, ST. URSULE-ST.

An Act respecting Insolvency.

WHEREAS it is expedient that provision be made for the settlement of the estates of insolvent debtors, for giving effect to arrangements between them and their creditors, and for the punishment of fraud: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Preamble.

1. This Act shall apply in Lower Canada to traders only, and in Upper Canada to all persons whether traders or non-traders.

Application of this Act.

OF VOLUNTARY ASSIGNMENT.

2. Any person unable to meet his engagements and desirous of making an assignment of his estate, or who is required so to do as hereinafter provided, may call a meeting of his creditors at his usual place of business; or at his option at any other place which may be more convenient for them; and such meeting shall be called by advertisement (Form A), stating in such advertisement the object of such meeting; and at such meeting he shall exhibit statements showing the position of his affairs, and particularly a schedule (Form B), containing the names and residences of all his creditors, and the amount due to each, distinguishing between those amounts which are actually overdue, or for which he is directly liable, and those for which he is only liable indirectly as endorser, surety or otherwise, and which have not become due at the date of such meeting; and also the particulars of any negotiable paper bearing his name, the holders of which are unknown to him—which schedule shall be sworn to by the Insolvent, and may be corrected by him likewise under oath at the meeting at which it is so produced; also the amount due to each creditor, and a statement showing the amount and nature of all his assets; and shall also produce his books of account, and all other documents and vouchers, if required so to do by any creditor.

Proceedings to assign an Insolvent Estate

2. Each notice of such meeting sent by Post as hereinafter provided, shall be accompanied by a list containing the names of all the creditors of the Insolvent whose claims exceed \$100 and the aggregate amount of those under \$100.

Notice of meeting of creditors.

3. At such meeting, the creditors may name an assignee, to whom such assignment may be made; and if a vote be taken upon such nomination, each creditor shall only represent in such vote the amount of direct liabilities of the insolvent to him, and the amount of indirect liabilities then actually overdue; and thereafter the insolvent shall make an assignment of his estate and effects to the assignee so chosen.

Assignee may be appointed at the meeting.

4. If no assignee be named at such meeting, or at any adjournment thereof, or if the assignee named refuse to act, or if no creditor attend at such meeting, the insolvent may assign his estate to any solvent creditor resident within this province, not related, allied, or of kin to him, and being such creditor for a sum exceeding \$500, or if he has no such creditor for so large a sum who will accept such assignment, then to the creditor otherwise competent and willing to accept,

In case no assignee be appointed.

representing the largest claim upon him; or he may make such assignment to any official assignee, resident within the district or county within which the insolvent has his place of business and nominated for the purposes of this Act by the Board of Trade in such district or county, or if there be no Board of trade therein, then by the nearest Board of Trade thereto. 5

As to decision of disputes arising at the meeting.

5. If any dispute arises at the first meeting of creditors as to the amount which any one of the creditors is entitled to represent in the nomination of an assignee, or upon any other question which may properly be discussed at such meeting; such dispute shall be decided by the vote of the majority in number of the creditors present, or represented by agents or proxies. But if the dispute have reference to any pretensions of any creditor as to the existence or amount of his claim, such creditor shall not vote upon the question. But no neglect or irregularity in any of the proceedings antecedent to the appointment of the assignee, shall vitiate an assignment subsequently made to an assignee competent to receive it under this Act. 10 15

Irregularly not to vitiate assignment.

Form of deed of assignment

6. The deed or instrument of assignment may be in the form C, or in any other form equivalent thereto, and if executed in Upper Canada, shall be in duplicate, and a copy of the list of creditors produced at the first meeting of the creditors shall be appended to it; and no particular description or detail of the property or effects assigned need be inserted in such deed. And any number of counterparts of such deed required by the assignee shall be executed by the Insolvent at the request of the Assignee, either at the time of the execution of such deed or instrument, or afterwards; to which counterparts no list of creditors need be appended. 20 25

Effect of such assignment.

7. The assignment shall be held to convey and vest in the assignee, the books of account of the insolvent, all vouchers, accounts, letters and other papers and documents relating to his business, all moneys and negotiable paper, stock, bonds, and other securities, as well as all the real estate of the Insolvent, and all his interest therein, whether in fee or otherwise, and also all his personal estate, movable and immovable property, debts, assets and effects, which he has or may become entitled to at any time before his discharge is effected under this Act; excepting only such as are exempt from seizure and sale under execution, by virtue of the several statutes in such case made and provided. 30 35

Copy of assignment to be deposited.

8. Forthwith upon the execution of the deed of assignment, the assignee, if appointed in Upper Canada, shall deposit one of the duplicates thereof, and if in Lower Canada, an authentic copy thereof, in the office of the proper Court; and in either case the said list of creditors shall accompany the deed or instrument so deposited. 40

Registration of deed of assignment.

9. If the Insolvent possesses real estate, the deed of assignment may be enregistered in the Registry Office for the Registration Division or County within which such real estate is situate; and no subsequent registration of any deed or instrument of any kind executed by the Insolvent, or which otherwise would have affected his real estate, shall have any force or effect thereon. And if the real estate be in Upper Canada and the deed of assignment be executed in Lower Canada before Notaries, a copy of the deed certified under the hand and official seal of the Notary or other public officer in whose custody the original remains, may be registered without other evidence of the execution thereof, and without any memorial; and a certificate of such registration may be endorsed upon a like copy. And if the property be in Lower Canada and the deed of assignment be executed in Upper Canada, it may be enregistered by memorial or at full length in the usual manner; but it shall not be necessary to enregister, or to refer on registration in any manner to the list of creditors annexed to the deed of assignment. 45 50 55

10. If such deed be executed in Upper Canada, according to the form of execution of deeds prevailing there, it shall have the same force and effect in Lower Canada, as if it had been executed in Lower Canada before notaries. And if such deed be executed in Lower Canada before notaries it shall have the same force and effect in Upper Canada, as if had been executed in Upper Canada, according to the law in force there; and copies of such deed, certified as aforesaid, shall constitute, before all Courts and for all purposes. *prima facie* proof of the execution and of the contents of the original of such deed without production of the original.

Deed executed in U. C. to have force in L. C., and vice versa.

COMPULSORY LIQUIDATION.

3. A debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation;

In what cases an estate shall become liable to compulsory liquidation.

a. If he absconds or is immediately about to abscond from this Province with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process, or if being out of the Province he so remains with a like intent; or if he conceals himself within this Province with a like intent;

b. Or if he secretes or is immediately about to secrete any part of his estate and effects with intent to defraud his creditors or to defeat or delay their demands or any of them;

c. Or if he assigns, removes or disposes of, or is about or attempts to assign, remove or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

d. Or if with such intent he has procured his money, goods, chattels, lands or property to be seized, levied on or taken under or by any process, or execution having operation where the debtor resides or has property, founded upon a demand in its nature provable under this Act and for a sum exceeding \$200, and if such process is in force and not discharged by payment or in any manner provided for by law;

e. Or if he has been actually imprisoned or upon the gaol limits for more than thirty days in a civil action founded on contract for the sum of \$200 or upwards, and still is so imprisoned or on the limits: or if in case of such imprisonment he has escaped out of prison or from custody or from the limits;

f. Or if he wilfully neglects or refuses to appear on any rule or order requiring his appearance to be examined as to his debts, under any statute or law in that behalf;

g. Or if he wilfully refuses or neglects to obey or comply with any such rule or order made for payment of his debts or of any part of them;

h. Or if he wilfully neglects or refuses to obey or comply with the order or decree of the Court of Chancery or of any of the Judges thereof, for payment of money;

i. Or if he has made any general conveyance or assignment of his property for the benefit of his Creditors, otherwise than in the manner prescribed by this Act.

2. If a trader ceases to meet his commercial liabilities generally as they become due, any creditor for a sum exceeding two hundred dollars may make a demand upon him (Form E.) requiring him to make an assignment of his estate and effects for the benefit of his creditors.

When an assignment to creditors may be awarded.

3. If the trader, on whom such demand is made, contends that the claim of such creditor does not amount to \$200, or that it was procured in whole or in part for the purpose of enabling him to take proceedings under this Act; or that the stoppage of payment by such trader was only temporary, and that it was not caused by any fraud or fraudulent intent, or by the insufficiency of the assets of such trader to meet his liabilities, he may within five days from such demand, present a petition

Recourse of trader to stay further proceedings on such demand.

to the Judge praying that no further proceedings under this Act may be taken upon such demand: And, after hearing the parties and such evidence as may be adduced before him, the Judge may grant the prayer of his petition and thereafter such demand shall have no force or effect whatever; and such petition may be granted with or without costs against either party. But if it appears to the Judge that such demand has been made without reasonable grounds, and merely as a means of enforcing payment under color of proceeding under this Act, he may condemn the creditor to pay treble costs. 5

If trader fails to comply with such demand, his estate to be subject to compulsory liquidation.

4. If such Petition be rejected; or if no such Petition be presented within the aforesaid time, and the Insolvent during the same time neglects to call a meeting of his creditors as provided by the second section of this Act; or if he does not complete such assignment within three days after such meeting; or if there be an adjournment thereof within three days after such adjournment; or if having given notice of a meeting of creditors, as required by the second section of this Act, he neglects to proceed further thereunder, his estate shall become subject to compulsory liquidation. 10 15

But proceedings for compulsory liquidation must be taken within a certain period.

5. But no act or omission shall justify any proceeding to place the estate of an insolvent in compulsory liquidation, unless proceedings are taken under this Act in respect of the same, within three months next after the act or omission relied upon as subjecting such estate thereto; nor after a voluntary assignment has been made, or an assignee appointed under this Act. 20

Proceedings in L. C. to obtain the issue of a writ of attachment.

6. In Lower Canada an affidavit may be made by a creditor for a sum not less than \$200, or by the clerk or other duly authorized agent of such creditor, setting forth the particulars of his debt, the insolvency of the person indebted to him, and any fact or facts which, under this Act, subject the estate of such debtor to compulsory liquidation, (Form F,) and upon such affidavit being filed with the Prothonotary of the District within which the insolvent has his place of business, a writ of attachment (Form G,) shall issue against the estate and effects of the insolvent addressed to the Sheriff of the District in which such writ issues, requiring such Sheriff to seize and attach the estate and effects of the insolvent, and to summon him to appear before the Court to answer the premises within such time as is usual therein for the return of ordinary writs of summons; and such writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to sustain the issue thereof; and shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits, as to its issue, service, return and subsequent proceedings. 25 30 35 40

Proceedings in U. C. to obtain such writ.

7. In Upper Canada, in case any creditor by affidavit of himself or any other individual, (Form F,) shows to the satisfaction of the Judge that he is a creditor of the insolvent for a sum of not less than two hundred dollars, and also shows by affidavit such facts and circumstances as satisfy such Judge that the debtor is insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such Judge may order the issue of a writ of attachment (Form G,) against the estate and effects of the insolvent, addressed to the Sheriff of the County in which such writ issues, requiring such Sheriff to seize and attach the estate and effects of the insolvent and to summon him to appear before the Court to answer the premises within such time as is usual therein for the return of ordinary writs of summons; and such writ shall be accompanied by a declaration setting forth such facts and circumstances as are necessary to be proved to maintain the issue thereof, and shall be subject as nearly as can be to the rules of procedure of the Court in ordinary suits as to its issue, return, and subsequent proceedings. 45 50 55

8. Immediately upon the issue of a writ of attachment under this Act, the Sheriff shall give notice thereof by advertisement thereof, (Form H.)

Notice of issue of writ. How writ shall be executed.

9. Under such writ of attachment the sheriff shall by himself or by such agent or messenger as he shall appoint for that purpose, whose authority shall be established by a copy of the writ addressed to him by name and description, and certified under the hand of the Sheriff; seize and attach all the estate and effects of the insolvent wherever situated, including his books of account, moneys and securities for money, and all his office and business papers, documents, and vouchers of every kind and description; and shall return with the writ, a report under oath of his action thereon.

Return.

10. If the Board of Trade in the County or District in which is situate the place of business of the debtor, or if there be no Board of Trade in such County or District, then the Board of Trade nearest thereto, has appointed official assignees for the purposes of this Act, the Sheriff shall place the estate and effects attached, in the custody of one of such official assignees, who shall be guardian under such writ; but if not he shall appoint as guardian such solvent and responsible person as may be willing to assume such guardianship.

In whose custody the property attached shall be placed.

11. The person so placed in possession shall forthwith proceed to make an inventory of the estate and effects of the insolvent; and also such statements of his affairs as can be made from the books, accounts and papers attached. And he shall file such inventory in the Court on the return day of the writ; and shall produce such statements at the meeting of creditors called for the appointment of an official assignee.

Duty of such person.

12. Except in cases where a petition has been presented as provided for by the third paragraph of this section, the alleged insolvent may present a petition to the Judge, at any time within five days from the return day of the writ, but not afterwards, and may thereby pray for the setting aside of the attachment made under such writ, on the ground that his estate has not become subject to compulsory liquidation; and such petition shall be heard and determined by the Judge in a summary manner, and conformably to the evidence adduced before him thereon.

Proceedings by alleged insolvent set aside writ.

13. Immediately upon the expiration of five days from the return day of the writ, if no petition to quash or to stay proceedings be filed; or upon the rendering of judgment on the petition to quash, if it be dismissed; the Judge upon the application of the Plaintiff, or of any creditor intervening for the prosecution of the cause, shall order a meeting of the creditors to be held before him or any other Judge, at a time and place named in such order, and after due notice thereof, for the purpose of giving their advice upon the appointment of an official assignee.

Meeting of creditors for appointment of official assignee.

14. At the time and place appointed, on hearing the advice of the creditors present upon oath (Form I), the Judge shall appoint some person to be such official assignee, which person shall be the person proposed by the creditors present, if they are unanimous; and if they are not unanimous, then the judge may appoint either one of the persons proposed by the creditors, or one of the official assignees named by the Board of Trade.

Who may be official assignee.

15. Instead of petitioning to quash the attachment, the debtor may, within the like delay, petition the judge to suspend further proceedings against him, and to that end to submit such petition to a meeting of the creditors and the debtor to be called for that purpose, in order that the creditors may determine whether the proceedings against the debtor shall be suspended or not.

Debtor may petition for suspension of proceedings.

16. The debtor shall produce with such petition a schedule of his estate, and a list of his creditors with the amount of his indebtedness to each, and the places of their respective residences, or places of busi-

Schedule to be produced with the petition.

ness, together with particulars of any negotiable paper on which his name appears, the holders of which are unknown to him ; the whole under oath.

Duty of Judge in such case. 17. Upon the schedule of the estate and the list of creditors being furnished by the debtor, sworn to as aforesaid, the Judge instead of ordering a meeting of creditors to be called for the appointment of an official assignee, shall order a meeting of creditors to be called by advertisement, for the purpose of taking into consideration the prayer of such petition, and at such meeting shall take and record by a writing under his hand the opinion of the creditors thereon.

Postponement of meeting. 18. The Judge shall postpone the meeting so called if it appears that the creditors have not been properly and reasonably notified, or that important omissions have been made in the creditors' list.

Judge to preside at meeting. 19. The Judge shall preside at such meeting of creditors, and the question which they shall decide shall be, " Shall the debtor be proceeded against under this Act or not ? " And if the decision of the majority in number and three-fourths in value of the creditors for sums above \$100, present or represented, be in the negative, it shall be in force for three calendar months thereafter, during which time no other proceedings in insolvency shall be commenced against the debtor, based upon any act or omission of his which took place previous to the institution of the proceedings so stayed by the decision of the creditors.

Proceedings on decision meeting. 20. If the decision at such meeting be not in the negative the Judge shall at once proceed thereat to take the advice of the creditors as to the appointment of an official assignee and shall appoint such assignee as hereinbefore provided.

In case of question as to amount of any creditor's claim. 21. If any question arises at such meeting respecting the amount of any creditor's claim, it shall be decided by the Judge upon a hearing of the parties, and from an inspection of the schedules and list so sworn to by the debtor, and of the statements of the debtor's affairs prepared and produced at such meeting by the guardian, or person intrusted with the writ of attachment.

Effect of appointment of official assignee. 22. Upon the appointment of the official assignee, the guardian shall deliver the estate and effects attached, to the official assignee ; and by the effect of his appointment, the whole of the estate and effects of the insolvent, as existing at the date of the issue of the writ, and which may accrue to him by any title whatsoever, up to the time of his discharge under this Act, and whether seized or not seized under the writ of attachment, shall vest in the said official assignee, in the same manner and to the same extent, and with the same exceptions as if a voluntary assignment of the estate of the insolvent had been at that date executed in his favor by the insolvent.

Registration of appointment, and its effect. 23. An authentic copy or exemplification, under the hand of the proper officer of the Court, of the order of the Judge appointing an official assignee, may be registered at full length in any registry office, without any proof of the signature of the officer and without any memorial ; and such registration shall have the same effect as to the real estate of the insolvent and in all other respects, as the registration of a deed of assignment under this Act.

Notice of appointment. 24. Immediately upon his appointment, the official assignee shall give notice thereof by advertisement (form K) ; requiring by such notice all creditors of the insolvent to produce before him their claims, and the vouchers in support thereof.

OF ASSIGNEES.

Boards of Trade may name official assignees. 5. The Board of Trade at any place, or the Council thereof, may name any number of persons within the County or District in which such Board of Trade exists, or within any County or District adjacent

thereto, in which there is no Board of Trade, to be official assignees for the purposes of this Act, and at the time of such nomination, shall declare what security for the due performance of his duties shall be given by each of such official assignees before entering upon them; and a copy of the resolution naming such persons, certified by the Secretary of the Board, shall be transmitted to the Prothonotary or Clerk of the Court in the District or County within which such assignees are resident.

2. Such security shall be taken in the name of office of the President of such Board of Trade, for the benefit of the creditors of any person whose estate is, or subsequently may be, in process of liquidation under this Act; and in case of the default of any such assignee in the performance of his duties, his security may be enforced and realized by the assignee who shall be appointed his successor, who may sue in his own name as such assignee upon such security.

Security to be given by assignee.

3. The assignee shall call meetings of creditors, whenever required in writing so to do by five creditors, stating in such writing the purpose of the intended meeting; or whenever he is required so to do by the Judge, on the application of any creditor, of which application he shall have notice; or whenever he shall himself require instructions from the creditors; and he shall state succinctly in the notice calling any meeting, the purposes of such meeting.

Meetings of creditors to be called by.

4. The assignee shall be subject to all rules, orders, and directions, not contrary to law, or to the provisions of this Act, which are made for his guidance by the creditors at a meeting called for the purpose; and until he receives directions from the creditors in that behalf, if there be a Bank or agency of a Bank in the County in which the insolvent has his place of business, or within fifteen miles of such place, he shall deposit weekly, at interest, in the name of the estate, all moneys received by him, in the bank or bank agency in or nearest to the place where the insolvent so carries on business.

Assignee to be subject to certain rules.

5. The assignee shall attend all meetings of creditors, and take and preserve minutes of such meetings, signed by himself, and signed and certified at the time by the chairman, or by three creditors present at the meeting; and copies of, and extracts from, such minutes, certified by the assignee, shall be *prima facie* evidence of the proceedings purporting to be recorded in such minutes. And he shall also keep a correct register of all his proceedings, and of all claims made to or before him.

To attend all meetings of creditors.

To keep a register.

6. The assignee shall give such security and in such manner as shall be ordered by a resolution of the creditors; and shall conform himself to such directions in respect thereof, and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions; and in every case, except where the security has been taken in the name of the President of the Board of Trade, and is not required to be changed, the Bond or instrument of security shall be taken in favor of the creditors, by the name of the "Creditors of A. B., an insolvent, under the Insolvent Act of 1863;" and shall be deposited in the office of the Court; and in case of default by the assignee on whose behalf it is given, may be sued upon by any assignee who shall be subsequently appointed, in his own name as such assignee.

Security to be given to the creditors.

7. All powers vested in any insolvent which he might legally execute for his own benefit, shall vest in, and be executed by the assignee, in like manner, and with like effect as they were vested in the insolvent, and might have been executed by him, but no powers vested in the Insolvent or property or effects held by him as Trustee or otherwise for the benefit of others shall vest in the assignee under this Act.

Powers of insolvent to vest in assignee.

Winding up
affairs.

8. The assignee shall wind up the affairs of the insolvent, by the sale in a prudent manner, of all bank and other stocks, and of all movables belonging to him, and by the collection of all debts; but in all of such respects shall be guided by the direction of the creditors, given as herein provided. 5

Assignee's
right-of
action.

9. The assignee, in his own name as such, may sue for the recovery of all debts due to the Insolvent; and may take, both in the prosecution and defence of suits, all the proceedings that the insolvent might have taken with respect to the estate, and may intervene and represent the insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment, and on his application may have his name inserted therein, in the place of that of the insolvent. 10

Assignee's
rights, if in-
solvent be a
co-partner,
&c.

10. If a partner in an unincorporated trading Company or co-partnership, becomes insolvent within the meaning of this Act, and an assignee is appointed to the estate of such insolvent, the assignee shall have all the rights of action and remedies against the other partners in such Company or co-partnership which any partner could have or exercise by law against his co-partners after the dissolution of the firm; and may avail himself of such rights of action, and remedies as if such co-partnership or Company had expired by efflux of time. 15 20

How assignee
may deal with
doubtful
debts.

11. After having acted with due diligence in the collection of the debts, if the assignee finds there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he may report the same to the creditors at a meeting thereof duly called for the purpose; and with their sanction he may obtain an order of the Judge to sell the same by public auction, after such advertisement thereof, as may be required by such order; and pending such advertisements, the assignee shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts. But all debts amounting to more than \$100, shall be sold separately. 25 30

Proviso.

Purchaser of
any such
debt.

12. The person who purchases a debt from the assignee, may sue for it in his own name as effectually as the insolvent might have done, and as the assignee is hereby authorized to do; and a bill of sale (form L.) signed and delivered to him by the assignee, shall be *prima facie* evidence of such purchase without proof of the handwriting of the Assignee; and no warranty except as to the good faith of the assignee, shall be created by such sale and conveyance, not even that the debt is due. 35

Sale of insol-
vent's real
estate.

13. The assignee may sell the real estate of the insolvent; but only after advertisement thereof, for the same time and in the same manner as is required for the actual advertisement of sales of real estate by the Sheriff, in the district where such real estate is situate, and to such further extent as the assignee deems expedient; but the period of advertisement may be shortened to not less than two months by a resolution of the creditors passed at a meeting called for that purpose, and approved of by the Judge. And if the price offered for any real estate at any public sale duly advertised as aforesaid, is in the opinion of the assignee too small, he may withdraw such real estate, and sell it subsequently under such directions as he receives from the creditors. 40 45 50

Effect of sale
of real estate
by assignee.

14. The sale of real estate in Upper Canada, so made by the assignee, shall have the same effect as if the same had been made by a Sheriff in Upper Canada, under a writ of execution issued in the ordinary course. And in Lower Canada, such sales shall have the same effect as if made by a Sheriff under a similar writ. And the deed of such sale which the assignee executes, (Form M.) shall have precisely the same effect as a Sheriff's deed has in that part of the Province within which the real estate is situate. But he may grant such terms of credit as he may deem expedient; and as may be approved of by the creditors for 55

any part of the purchase money. And if no previous mortgage remains upon such real estate, he shall be entitled to reserve a special mortgage by the deed of sale, as security for the payment of such part of the purchase money, and such deed may be executed before witnesses, or

5 before Notaries, according to the exigency of the law of the place where the real estate sold is situate.

15. In Lower Canada before advertising any sale of real estate, the assignee shall procure at the expense of the estate from the Registrar of the County wherein such real estate is situate, a certificate containing the names and residences as shewn by the Registry books of the persons enregistered as hypothecary creditors upon such real estate. And he shall himself deposit in the nearest post office a notice with the postage thereon paid, addressed to each of such creditors by the name and to the address contained in such certificate, and also a notice addressed to each creditor at any other place where the assignee has reason to believe such creditor to be then resident; and also a notice addressed to any other person whom the assignee has reason to believe to be then the creditor of such hypothecary claim, informing the creditors of the day fixed for the sale of the real estate, and of the time

10 within which the hypothecary creditors are required to file their claims under this Act. And before the day of sale he shall file in the office of the Court the certificate of the Registrar with a return thereon under oath as to his doings in respect of such notices. And the assignee shall be directly liable for any neglect of the duty imposed upon him

20 by this section, to any party suffering damage in consequence of such neglect.

Duty of assignee in L.C. before sale of real estate.

16. The assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner, and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the performance of his duties may be enforced by the Judge on summary

20 petition in vacation, or by the Court on a rule in term, under penalty of imprisonment, as for contempt of Court; whether such duties be imposed upon him by the deed of assignment, by instructions from the creditors validly passed by them under this Act and communicated to

35 him, or by the terms of this Act.

Assignee to be subject to the summary jurisdiction of the Court.

17. Before the period at which dividends may be declared, any assignee may be removed by the Judge, upon proof of fraud or dishonesty in the custody or management of the estate, upon the application of any creditor. And if such removal takes place, or if the assignee dies

40 more than fifteen days before the said period, the Judge may appoint another assignee in the same manner as he can appoint an assignee to an estate in compulsory liquidation. But if the assignee be removed or dies within fifteen days of the said period, the Judge shall order a meeting of creditors to be held for the purpose of appointing another assignee, and shall cause notice of such meeting to be given by advertisement.

Removal of assignee by the Judge.

18. Any assignee may be removed after the period at which dividends may be declared, by a resolution passed by the creditors present or represented at a meeting duly called for the purpose; and if

50 the removal has been effected by an order of the Judge, or if the assignee dies within fifteen days before the said period, or if the removal is effected by the creditors after the said period, they shall have the right of appointing another assignee, either at the meeting by which he is removed or at any other called for the purpose.

Removal of assignee by the creditors.

55 19. The assignee so removed shall nevertheless remain subject to the summary jurisdiction of the Court, and of any Judge thereof, until he shall have fully accounted for his acts and conduct while he continued to be assignee.

To remain subject to jurisdiction of the Court.

- Remunerat'n of assignee.** 20. The remuneration of the assignee shall be fixed by the creditors at a meeting called for the purpose; but if not so fixed before a final dividend is declared, shall be put into the dividend sheet at a rate not exceeding five *per centum* upon the cash receipts, subject to objection by any creditor as exceeding the value of the services of the assignee, 5 in the same manner as any other item of the dividend sheet.
- In the event of his death.** 21. Upon the death of an assignee the estate of the insolvent shall not descend to the heirs or representatives of the assignee; but shall 10 become vested in any assignee who shall be appointed by the creditors in his place and stead: and until the new assignee is appointed, the estate shall be under the control of the Judge.
- How assignee may obtain his discharge.** 22. After the declaration of a final dividend, the assignee may prepare his final account, and after due notice by advertisement, may pre- 15 sent a petition to the Judge for his discharge from the office of assignee. And from the time of the first advertisement thereof, to the time of the presentation of such petition, he shall keep such final account open for inspection at his office.
- Certificate to be filed with petition for discharge.** 23. The assignee shall produce and file with such petition a bank 20 certificate of the deposit of any dividends remaining unclaimed, or of any balance in his hands, and thereupon the judge, after hearing the parties, may refuse, or grant conditionally or unconditionally the prayer of such petition.

OF DIVIDENDS.

- Accounts to be kept and dividends prepared by assignee.** 6. Upon the expiry of the period of two months from the first inser- 25 tion of the advertisements giving notice of an assignment, or of the appointment of an official assignee, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than six months, the assignee shall prepare and keep constantly accessible to the creditors, accounts and statements of his doings as 30 such assignee, and of the position of the estate; and at similar intervals shall prepare dividends of the estate of the insolvent.
- What debts may rank for payment out of insolvent's estate.** 2. All debts due and payable by the Insolvent at the time of the execution of a deed of assignment, or at the time of the issue of a writ of attachment under this Act, and all debts due but not then actually 35 payable, subject to such rebate of interest as may be reasonable, shall have the right to rank upon the estate of the Insolvent. And any person then being a surety or otherwise liable for any debt of the Insolvent, who subsequently pays such debt, shall stand in the place of the original creditor, if such creditor has proved his claim on such debt; 40 or if he has not proved shall be entitled to prove against and rank upon the estate for such debt, to the same extent and with the same effect as such creditor might have done.
- Contingent claims, provision for payment of.** 3. If any creditor of the Insolvent claims upon a contract dependent upon a condition or contingency, which does not happen previous to 45 the declaration of the first dividend, a dividend shall be reserved upon the amount of such conditional or contingent claim until the condition or contingency is determined.—But if it be made to appear to the Judge that such reserve will probably retain the estate open for an undue 50 length of time, he may, unless an estimate of the value thereof be agreed to between the Claimant and the Assignee, order the Assignee to make an award upon the value of such contingent or conditional claim: and thereupon the Assignee shall make an award after the same investigation, and in the same manner and subject to a similar appeal, as is hereinafter provided for the making of awards upon disputed claims and 55 dividends, and for appeals from such awards; and in every such case the value so established or agreed to shall be ranked upon as a debt payable absolutely.

4. In the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor, which rank and privilege upon whatever they may legally be founded, shall not be disturbed by the provisions of this Act. But no dividend shall be paid to any creditor holding collateral security from the Insolvent for his claim, until the amount for which he shall rank as a creditor on the estate as to dividends therefrom, shall be established as hereinafter provided; and such amount shall be the amount which he shall be held to represent in voting at meetings of creditors, and in computing the proportion of creditors, whenever under this Act such proportion is required to be ascertained.
5. A creditor holding security from the Insolvent, or from his estate, shall specify the nature and amount of such security in his claim, and shall therein, on his oath, put a specified value on such security; and the Assignee, under the authority of the creditors, may either consent to the retention of such security by the creditor at such specified value, or he may require from such creditor an assignment and delivery of such security, at an advance of ten per centum upon such specified value, to be paid by him out of the estate so soon as he has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either of such cases the difference between the value at which the security is retained or assumed and the amount of the claim of such creditor, shall be the amount for which he shall rank and vote as aforesaid.
6. The amount due to a creditor upon each separate item of his claim at the time of the assignment, or of the appointment of the official assignee, as the case may be, shall form part of the amount for which he shall rank upon the estate of the Insolvent, until such item of claim be paid in full, except in cases of deduction of the proceeds of collateral security as hereinbefore provided. But no claim or part of a claim shall be permitted to be ranked upon more than once, whether the claim so to rank be made by the same person or by different persons.
7. If the Insolvent owes debts both individually and as a member of a co-partnership, or as a member of two different co-partnerships, the claims against him shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full.
8. The creditors, or the same proportion of them that may grant a discharge to the debtor under this Act, may allot to the Insolvent by way of allowance any sum of money, or any property they may think proper; and the allowance so made shall be inserted in the dividend sheet, and shall be subject to contestation like any other item of collocation therein, but only on the ground of fraud or deceit in procuring it, or of the absence of consent by a sufficient proportion of the creditors.
9. No costs incurred in suits against the Insolvent after due notice of an assignment or of the issue of the writ of attachment in compulsory liquidation has been given according to the provisions of this Act, shall rank upon the estate of the Insolvent; but all the taxable costs incurred in proceedings against him up to that time, shall be added to the demand, for the recovery of which, such proceedings were instituted; and shall rank upon the estate as if they formed part of the original debt.
10. Clerks, and other persons in the employ of the Insolvent in and about his business or trade, shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them at the time of the execution of a deed of assignment or of the issue of a writ of attachment under this Act, not exceeding three months of such arrears.
11. So soon as a dividend sheet is prepared, notice thereof (form K) shall be given by advertisement, and after the expiry of six juridical days from the day of the last publication of such advertisement, all dividends which have not been objected to within that period shall be paid.

Preparation
of dividend
sheet.

Creditors
holding secu-
rity from the
insolvent.

How creditors
shall rank for
payment of
claims.

In case insol-
vent owes in-
dividually
and as co-
partner.

Allowance to
insolvent.

As to costs of
suits against
insolvent
after notice
of assign-
ments.

Certain debts
to rank by
privilege.

Notice of div-
idend sheet.

In case insolvent has not disclosed all his creditors.

12. If it appears to the assignee, on the examination of the books of the Insolvent or otherwise, that the Insolvent has ordinary, hypothecary or privileged creditors, who have not filed claims before such assignee, it shall be his duty to reserve dividends for such creditors according to the nature of the claims, and to notify them of such reserve; which notification may be by letter through the post, addressed to such creditors' residences as nearly as the same can be ascertained by the assignee.—And if such creditors do not file their claims and apply for such dividends previous to the declaration of the last dividend of the estate, the dividends reserved for them shall form part of such last dividend. 5

In case of objections to or disputes concerning dividends.

13. If any dividend be objected to, within the said period of six days, and any dispute arises between the creditors of the Insolvent or between him and any creditor, as to the correct amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon such dividend sheet; the assignee shall obtain from the creditor whose claim or ranking is disputed, his statements and vouchers in support thereof, and from the Insolvent or opposing creditor, a statement showing his pretensions as to the amount thereof, and shall hear and examine the parties and their witnesses under oath; which oath the assignee is hereby empowered to administer; and shall take clear notes in writing of the parole evidence adduced before him, and shall examine and verify the statements submitted to him, by the books and accounts of the Insolvent and by such evidence, vouchers and statements as may be furnished to him; and shall make an award in the premises, and as to the costs of such contestation, which award shall be deposited in the Court and shall be final, unless appealed from within three days from the date of its communication to the parties to the dispute. 15 20

Award of assignee as to costs.

14. The award of the assignee as to costs, may be made executory by execution in the same manner as an ordinary judgment of the Court, by an order of the Judge upon the application of the party to whom costs are awarded, made after notice to the opposite party. 30

Costs of contestation.

15. The creditors may, by resolution, authorize and direct the costs of the contestation of any claim or any dividend to be paid out of the estate; and may make such order either before or pending any such contestation. 35

Pending appeal.

16. Pending any appeal, the assignee shall reserve a dividend equal to the amount of dividend claimed.

Unclaimed dividends,—how dealt with.

17. All dividends remaining unclaimed at the time of the discharge of the assignee shall be left in the bank where they are deposited for three years, and if still unclaimed, shall then be paid over by such bank with the interest accrued thereon, to the Provincial Government; and if afterwards duly claimed shall be paid over to the persons entitled thereto, with interest at the rate of three per centum per annum from the time of the reception thereof by the Government. 45

Balance of estate after payment of debts.

18. If any balance remains of the estate of the Insolvent, or of the proceeds thereof, after the payment in full of all debts due by the Insolvent, such balance shall be paid over to the Insolvent upon his petition to that effect, duly notified to the creditors by advertisement, and granted by the Judge. 50

OF LEASES.

Assignee to report on value of income rents lease hold property

7. If the Insolvent holds under a lease, property having a value above and beyond the amount of rent payable under such lease, the Assignee shall make a report thereon to the Judge, containing his estimate of the value to the estate of the leased property in excess of the rent; and thereupon the Judge may order the rights of the Insolvent 55

in such leased premises to be sold, after notice by advertisement of such sale. And at the time and place appointed such lease shall be sold, upon such conditions, as to the giving of security to the Lessor, as the Judge may order. And such sale shall be so made, subject to the payment of the rent and to all the covenants and conditions contained in the lease; and all such covenants and conditions shall be binding upon the Lessor and upon the purchaser, as if the purchaser had been himself Lessee and a party with the Lessor to the lease. Sale thereof.

2. If the Insolvent holds under a lease extending beyond the year current under its terms at the time of his insolvency, property which is not subject to the provisions of the last preceding section, or respecting which the Judge does not make an order of sale, as therein provided, the creditors shall decide, at any meeting which may be held more than three months before the termination of the yearly term of the lease current at the time of such meeting, whether the property so leased should be retained for the use of the estate only up to the end of the term then current, or if the conditions of the lease permit of further extension also up to the end of the next following yearly term thereof; and their decision shall be final. In case lease extend beyond the current year.

3. From and after the time fixed for the retention of the leased property for the use of the estate the lease shall be cancelled, and shall from thenceforth be inoperative and null. And so soon as the resolution of the creditors as to such retention has been passed, such resolution shall be notified to the Lessor; and if he contends that he will sustain any damage by the termination of the lease under such decision, he may make a claim for such damage, specifying the amount thereof under oath, in the same manner as in ordinary claims upon the estate. And the assignee shall proceed forthwith to make an award upon such claim, in the same manner, and after similar investigation, and with the same right of appeal as is herein provided for in the case of claims or dividends objected to. Annulling of lease.
Lessor's claim for damages.

4. In making such claim, and in any award thereupon, the measure of damages shall be the difference between the value of the premises leased, when the lease terminates under the resolution of the creditors, and the rent which the Insolvent had agreed by the lease to pay during its continuance; and the chance of leasing or of not leasing the premises again, for a like rent, shall not enter into the computation of such damages. And if damages are finally awarded to the Lessor, he shall rank for the amount upon the estate as an ordinary creditor. How damages shall be estimated.

OF APPEAL.

8. There shall be an appeal to the Judge from the award of an assignee made under this Act, which appeal shall be by summary petition, of which notice shall be given to the opposite party and to the assignee; and the assignee shall attend before the Judge at the time and place indicated in such notice, and shall produce before him all evidence, notes of evidence, books, or proved extracts from books, documents, vouchers, or papers having reference to the matter in dispute; and thereupon the Judge may confirm such award, or modify it, or refer it back to the assignee for the taking of further evidence, by such order as will satisfy the ends of justice. Proceedings in appeal from award of assignee.

2. If any of the parties to such appeal are dissatisfied with such order of the Judge, they may appeal from his judgment in Lower Canada to the Court of Queen's Bench for Lower Canada on the Appeal Side thereof, and in Upper Canada to either of the Superior Common Law Courts or to the Court of Chancery, or to any of the Judges of the said Courts, first obtaining the allowance of such appeal in Lower Canada by a Judge of the Superior Court, and in Upper Canada by a Judge of any of the Courts to which such appeal may be made; and in either Appeal from decision of Judge.

case the Judge shall be guided in allowing the same by the amount to which the assets of the estate may be affected by the final decision of the question at issue, as well as by his opinion upon the pretensions of the appellant; but any appeal to a single Judge in Upper Canada may, in his discretion, be referred on a special case to be settled by the full Court, and on such terms in the meantime as he may think necessary and just. 5

Notice of appeal must be given within a certain period. 3. Such appeal shall not be permitted, unless the party desiring to appeal applies for the allowance of the appeal, with notice to the opposite party, within five days from the day on which the judgment of the Judge is rendered; and unless within five days after the allowance thereof he causes to be served upon the opposite party and upon the assignee, a Petition in appeal, setting forth the Petition to the Judge and his decision thereon, and praying for its revision, with a notice of the day on which such Petition is to be presented; and also, within the said period of five days, causes security to be given before the Judge by two sufficient sureties that he will duly prosecute such appeal, and pay all costs incurred by reason thereof by the respondent. 10 15

Presenting of petition in appeal. 4. The Petition in appeal, when the appeal is to a Court, shall be presented on one of the first four days of the term next following the putting in of the security in appeal, and shall not be thereafter received; and when the appeal is to a Judge, the Petition shall be presented within ten days after putting in security, and shall not thereafter be received; and on or before the day of the presentation of the Petition, the assignee shall file in the office of the Court of Appeal, or of the Court to which the Judge appealed to belongs, the evidence, papers, and documents which had been previously produced before the Judge; and thereupon the appeal shall be proceeded with and decided according to the practice of the Court. 20 25

In case petition is not presented on the day fixed. 5. If the party appellant does not present his petition on the day fixed for that purpose, the Court, or Judge selected to be appealed to, as the case may be, shall order the record to be returned to the assignee, and the party respondent may, on the following or any other day during the same term, produce before the Court, or within six days thereafter before such Judge, the copy of petition served upon him, and obtain costs thereon against the appellant. 30 35

Costs in appeal. 6. The costs in appeal shall be in the discretion of the Court, or of the Judge appealed to, as the case may be.

OF FRAUD AND FRAUDULENT PREFERENCES.

Certain contracts presumed to be made with intent to defraud. 9. All gratuitous contracts or conveyances, or contracts or conveyances without consideration, or with a merely nominal consideration, made by a debtor afterwards becoming an insolvent with any person whomsoever, within three months next preceding the date of the assignment or of the issue of the writ of attachment in compulsory liquidation, and all contracts by which creditors are injured, obstructed, or delayed, made by a debtor unable to meet his engagements and afterwards becoming an insolvent, with a person knowing such inability or having probable cause for believing such inability to exist, or after such inability is public and notorious, are presumed to be made with intent to defraud his creditors. 40 45

Contract injurious to creditors made within a certain period are voidable. 2. A contract or conveyance for consideration, by which creditors are injured or obstructed, made by a debtor unable to meet his engagements with a person ignorant of such inability, and before it has become public and notorious, but within thirty days next before the execution of a deed of assignment or the issue of a writ of attachment under this Act, is voidable, and may be set aside by any Court of competent jurisdiction, upon such terms, as to the protection of such 50 55

person from actual loss or liability by reason of such contract, as the Court may order.

3. All contracts or conveyances made and acts done by a debtor, with intent fraudulently to impede, obstruct, or delay his creditors in their remedies against him; or with intent to defraud his creditors, or any of them, and so made, done, and intended with the knowledge of the person contracting or acting with the debtor, and which have the effect of impeding, obstructing, or delaying the creditors in their remedies, or of injuring them, or any of them, are prohibited, and are null and void, notwithstanding that such contracts, conveyances or acts be in consideration or in contemplation of marriage.

Contracts with intent to defraud, &c., to be null.

4. If any sale, deposit, pledge, or transfer, be made by any person in contemplation of insolvency, by way of security for payment to any creditor; or if any goods, effects, or valuable security be given by way of payment by such person to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer, or payment, shall be null and void, and the subject thereof may be recovered back for the benefit of the estate by the assignee, in any Court of competent jurisdiction; and if the same be made within thirty days next before the execution of a deed of assignment or the issue of a writ of attachment under this Act, it shall be presumed to have been so made in contemplation of insolvency.

In what cases preferential sales &c., shall be deemed fraudulent.

5. Every payment made within thirty days next before the execution of a deed of assignment or the issue of a writ of attachment under this Act, by a debtor unable to meet his engagements in full, to a person knowing such inability or having probable cause for believing the same to exist, is void, and the amount paid may be recovered back by suit in any competent Court for the benefit of the estate: Provided always, that if any valuable security be given up in consideration of such payment, such security, or the value thereof, shall be restored to the creditor before the return of such payment can be demanded.

When payments shall be deemed fraudulent.

Proviso.

6. Any transfer of a debt due by the insolvent, made within thirty days next previous to the execution of a deed of assignment or the issue of a writ of attachment under this Act, or at any time afterwards, to a debtor, knowing, or having probable cause for believing the insolvent to be unable to meet his engagements, or in contemplation of his insolvency, for the purpose of enabling the debtor to set up by way of compensation or set-off the debt so transferred, is null and void as regards the estate of the insolvent; and the debt due to the estate of the insolvent shall not be compensated or affected in any manner by a claim so acquired, but the purchaser thereof may rank on the estate in the place and stead of the original creditor.

Transfers of debts due by insolvent.

7. Any trader in Lower Canada, and any person whomsoever in Upper Canada, who purchases goods on credit, or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person; or who by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or any part of the price of any goods, wares, or merchandize, with the intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such time as the Court may order, not exceeding years, unless the debt and costs be sooner paid. And if such debt or debts be incurred by a trading company, then every member thereof who shall not prove himself to have been ignorant of the incurring, and of the intention to incur, such debt or debts, shall be similarly liable: Provided always, that in the suit or proceeding taken for the recovery of such debt or debts, the defendant be charged with

Certain other frauds defined

Their punishment.

Proviso.

such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding.

Plaintiff in
UC. bound to
prove the
fraud charged

8. In Upper Canada, in every such suit or proceeding, whether the defendant appear and plead or make default, the plaintiff shall be bound to prove the fraud charged; and upon his proving it, the Judge who tries the suit or proceeding shall, immediately after the verdict rendered against the defendant for such fraud [if such verdict is given], adjudge the term of imprisonment which the defendant shall undergo, and he shall forthwith order and direct the defendant immediately to be taken into custody and imprisoned accordingly; but such judgment shall not affect the ordinary remedies for the revision thereof, or of any proceeding in the case. 5 10

OF COMPOSITION AND DISCHARGE.

When a deed
of composi-
tion and dis-
charge shall
be binding.

10. A deed of composition and discharge executed by the majority in number of those of the creditors of an insolvent who are respectively creditors for sums of one hundred dollars and upwards, and who represent at least three-fourths in value of the liabilities of the insolvent subjected to be computed in ascertaining such proposition, shall have the same effect with regard to the remainder of his creditors, and be binding to the same extent upon him and upon them as if they were also parties to it; and such a deed may be validly made either before, pending, or after proceedings upon an assignment, or for the compulsory liquidation of the estate of the insolvent, and the discharge therein agreed to shall have the same effect as an ordinary discharge, obtained as hereinafter provided. 15 20

Time within
which oppo-
sition to com-
position must
be made.

2. If the insolvent procures a deed of composition and discharge to be duly executed as aforesaid, and deposits it with the assignee pending the proceedings upon a voluntary assignment or for compulsory liquidation, the assignee, after the period hereinbefore fixed as that after which dividends may be declared, has elapsed, shall give notice of such deposit by advertisement; and if opposition to such composition and discharge be not made by a creditor within six juridical days after the last publication of such notice, by filing with the assignee a declaration in writing that he objects to such composition and discharge, the assignee shall act upon such deed of composition and discharge according to its terms. But if opposition be made thereto within the said period, or if made, be not withdrawn, then he shall abstain from taking any action upon such deed until the same has been confirmed, as hereinafter provided. 25 30 35

Effect of con-
sent of credi-
tors to debt-
ors discharge.

3. The consent in writing of the said proportion of creditors to the discharge of a debtor after an assignment, or after his estate has been put in compulsory liquidation, absolutely frees and discharges him from all liabilities whatsoever (except such as are hereinafter specially excepted) existing against him and proveable against his estate, which are mentioned and set forth in the statement of his affairs annexed to the deed of assignment, or which are shewn by any supplementary list of creditors furnished by the insolvent previous to such discharge, and in time to permit the creditors therein mentioned obtaining the same dividend as other creditors upon his estate, or which appear by any claim subsequently furnished to the assignee, whether such debts be exigible or not at the time of his insolvency, and whether direct or indirect; and if the owner of any negotiable paper is unknown to the insolvent, the insertion of the particulars of such paper in such statement of affairs, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper and the holder thereof within the operation of this section. 40 45 50 55

4. A discharge under this Act shall not operate any change in the liability of any person or company secondarily liable for the debts of the insolvent, either as drawer or endorser of negotiable paper, or as guarantor, surety, or otherwise, nor of any partner or other person liable jointly or severally with the insolvent for any debt; nor shall it affect any mortgage, *hypothèque*, lien, or collateral security held by any creditor as security for any debt thereby discharged.

Effect of discharge as regards persons secondarily liable for debts of insolvent.

5. A discharge under this Act shall not apply, without the express consent of the creditor, to any debt for enforcing the payment of which the imprisonment of the debtor is permitted by this Act; nor to any debt due as damages for personal wrongs, or as a penalty for any offence of which the insolvent has been convicted; or as a balance of account due by the insolvent as an assignee, tutor, curator, trustee, executor, or public officer; nor shall such debts, nor any privileged debts, nor the creditors thereof, be computed in ascertaining whether a sufficient proportion of the creditors of the insolvent have done or consented to any act, matter, or thing under this Act: But the creditor of any debt due as a balance of account by the insolvent as assignee, tutor, trustee, executor, or public officer, may claim and accept a dividend thereon from the estate without being in any respect affected by any discharge obtained by the insolvent.

Certain other debts excepted from operation of discharge.

6. An insolvent who has procured a consent to his discharge, or the execution of a deed of composition and discharge, within the meaning of this Act, may file in the office of the Court the consent or deed of composition and discharge, and may then give notice (Form O) of the same being so filed, and of his intention to apply by petition to the Court in Lower Canada, or in Upper Canada to the Judge, on a day named in such notice, for a confirmation of the discharge effected thereby; and notice shall be given by advertisement in the *Canada Gazette* for two months, and also for the same period, if the application is to be made in Upper Canada, in one newspaper; and, if in Lower Canada, in one newspaper published in French, and in one newspaper published in English, in or nearest to the place of residence of the insolvent. And upon such application, any creditor of the insolvent may appear and oppose such confirmation, either upon the ground of fraud or fraudulent preference, within the meaning of this Act; or of fraud or evil practice in procuring the consent of the creditors to the discharge, or their execution of the deed of composition and discharge, as the case may be; or of the insufficiency in number or value of the creditors consenting to or executing the same; or of the fraudulent retention and concealment by the insolvent of some portion of his estate or effects; or of the evasion, prevarication, or false swearing of the insolvent upon examination as to his estate and effects; or upon the ground that, subsequent to the passing of this Act, the insolvent has not kept an account book, shewing his receipts and disbursements of cash, and such other books of account as are suitable for his trade, or if, having at any time kept such book or books, he has refused to produce and deliver them to the assignee.

Proceedings to obtain confirmation of discharge.

Opposition to confirmation.

7. If the insolvent does not apply to the Court or Judge for a confirmation of such discharge within two months from the time at which the same has been effected under this Act, any creditor for a sum exceeding \$200 may cause to be served a notice in writing upon the insolvent, requiring him to file in the Court the consent, or the deed of composition and discharge, as the case may be; and may thereupon give notice (Form P), as hereinbefore provided with regard to applications for confirmation of discharge, of his intention to apply by petition to the Court in Lower Canada, or in Upper Canada to the Judge, on a day named in such notice, for the annulling of the discharge; and on the day so named may present a petition to the Court or Judge in accordance with such notice, setting forth the reasons in support of such application,

If confirmation be not sought within two months proceedings may be taken to annul discharge.

which may be any of the reasons upon which a confirmation of discharge may be opposed; and upon such application, if the insolvent has not, at least one month before the day fixed for the presentation thereof, filed in the office of the Court the consent or deed under which the discharge is effected, the discharge may be annulled without further enquiry, except as to the service upon him of the notice to file the same; but if such consent or deed be so filed, or if, upon special application, leave be granted to him to file the same at a subsequent time, and he do then file the same, the Court or Judge, as the case may be, shall proceed thereon as upon application for confirmation of such discharge. 5 10

Power of Court or Judge.

8. The Court or Judge, as the case may be, upon hearing the application to confirm or to annul the discharge, the objections thereto, and any evidence adduced, shall have power to make an order either confirming the discharge absolutely, suspensively, or conditionally, or annulling the same; and such order shall be final, unless appealed from in the manner herein provided for, as to appeals from the Court or Judge. 15

Effect of confirmation.

9. Until the Court or Judge, as the case may be, has confirmed such discharge, the burden of proof of the discharge being completely effected under the provisions of this Act shall be upon the insolvent; but the confirmation thereof, if not reversed in appeal, shall render the discharge thereby confirmed final and conclusive, and an authentic copy of the judgment confirming the same shall be sufficient evidence as well of such discharge as of the confirmation thereof. 20

When insolvent may apply to the court for discharge.

10. If, after the expiration of two years from the date of an assignment made under this Act, or from the date of the issue of a writ of attachment thereunder, as the case may be, the insolvent has not obtained from the required proportion of creditors a consent to his discharge, or the execution of a deed of composition and discharge, he may apply to the Court in Lower Canada, or to the Judge in Upper Canada, by petition, to grant him his discharge; first giving notice of such application (Form Q), in the manner hereinbefore provided for notice of applications for confirmation of discharge. 25 30

Opposition to such discharge.

11. Upon such application, any creditor of the insolvent may appear and oppose the granting of such discharge upon any ground upon which the confirmation of a discharge may be opposed under this Act. 35

power of Court.

12. The Court or Judge, as the case may be, after hearing the insolvent, and the objecting creditors, and any evidence that may be adduced, may make an order either granting the discharge of the insolvent absolutely, conditionally, or suspensively, or refusing it absolutely; and such order shall be final, unless appealed from in the manner herein provided for appeals from the Court or Judge. 40

Discharges fraudulently obtained to be null and void.

13. Every discharge or composition, or confirmation of any discharge or composition, which has been obtained by fraud or fraudulent preference, or by means of the consent of any creditor, procured by the payment to such creditor of any valuable consideration for such consent, shall be null and void. 45

EXAMINATION OF THE INSOLVENT AND OTHERS.

When and how insolvent may be examined.

11. Immediately upon the expiry of the period of two months from the first insertion of the advertisement giving notice of an assignment, or of the appointment of an official assignee, the assignee shall call a meeting, by advertisement, of the creditors, for the public examination of the insolvent, and shall summon him to attend such meeting; and at such meeting the insolvent may be examined on oath, sworn before the assignee, by or on behalf of any creditor present, in his turn; and the examination of the insolvent shall be reduced to writing by the assignee and signed by the insolvent; and any questions put to the insolvent at such meeting which he shall answer evasively, or refuse to answer, shall also be written in such examination, with the replies made by the insol- 55

vent to such questions; and the insolvent shall sign such examination, or if he refuses to sign the same, his refusal shall be entered at the foot of the examination, with the reasons for such refusal, if any, as given by himself. And such examination shall be attested by the assignee, 5 and shall be filed in the office of the Court.

2. The insolvent may also be from time to time examined as to his estate and effects upon oath, before the Judge, by the assignee or by any creditor, upon an order from the Judge, obtained without notice to the insolvent, upon petition, setting forth satisfactory reasons for such 10 order; and he may also be examined in like manner upon a *subpœna*, issued, as of course, without such order, in any action in which a writ of attachment has been issued against his estate and effects; which *subpœna* may be procured by the plaintiff, or by any creditor intervening in the action for that purpose, or by the assignee.

Examination of insolvent before the Judge.

15 3. The insolvent may be so examined by the assignee or by any creditor, on the application of the insolvent for a discharge, or for the confirmation or annulling of a discharge, at any stage of such proceedings, or upon any petition to set aside an attachment in the proceedings for the compulsory liquidation of his estate.

Examination by assignee or creditor.

20 4. Any other person who is believed to possess information respecting the estate or effects of the insolvent may also be from time to time examined before the Judge, upon oath, as to such estate or effects, upon an order from the Judge to that effect; which order the Judge may grant upon petition, setting forth satisfactory reasons for such order, 25 without notice to the insolvent or to the person to be so examined.

Other persons may be examined.

5. The insolvent shall attend all meetings of his creditors, when summoned so to do by the assignee, and shall answer all questions that may be put to him at such meetings touching his business, and touching his estate and effects; and for every such attendance he shall be paid 30 such sum as shall be ordered at such meeting, but not less than one dollar.

Insolvent to attend all meetings of creditors.

6. Any person summoned for examination or under examination under this Act shall be subject to proceedings and punishments similar to those which may be taken against or inflicted upon ordinary witnesses; 35 and, on application, the Judge may in his discretion order an allowance to be made to persons so examined, of a like amount to that allowed to witnesses in civil cases, and order them to be paid such allowance out of the estate or otherwise.

Conduct of witnesses.

Their costs.

OF PROCEDURE GENERALLY.

12. Notice of meetings of creditors, and all other notices herein re- 40 quired to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Canada Gazette*; also, in Lower Canada, in every issue during two weeks of one newspaper in English and one in French, and in Upper Canada, in one newspaper in English, published at or nearest 45 to the place where the proceedings are being carried on, if such newspapers are published within ten miles of such place; and in any case, the assignee or person giving such notice shall also address notices thereof to all creditors, and to all representatives of foreign creditors within the Province, and shall mail the same, with the postage paid 50 thereon, at the time of the insertion of the first advertisement.

Notices under this Act, how to be given.

2. The questions discussed at meetings of creditors shall be decided by the majority in number of all creditors for sums above \$100 present or represented at such meeting, and representing also the majority in value of such creditors, unless herein otherwise specially provided. But 55 if the majority in number do not agree with the majority in value, the meeting may be adjourned for a period of not less than fifteen days, of

Decision of questions.

which adjournment notice by advertisement shall be given; and if the adjourned meeting has the same result, the views of each section of the creditors shall be embodied in resolutions, and such resolutions shall be referred to the Judge, who shall decide between them.

What may be done at first meeting of creditors.

3. If the first meeting of creditors which takes place after the expiry of the period of two months from the date of the deed of assignment or of the appointment of an official assignee, be called for the ordering of the affairs of the estate generally, and it be so stated in the notices calling such meeting, all the matters and things respecting which the creditors may vote, resolve, or order, or which they may regulate under this Act, may be voted, resolved, or ordered upon, and may be regulated at such meeting, without having been specially mentioned in the notices calling such meeting, notwithstanding anything to the contrary in this Act contained; due regard being had, however, to the proportions of creditors required by this Act for any such vote, resolution, order, or regulation. 5 10 15

Claims of creditors.

4. The claims of creditors (Form R) shall be furnished to the assignee in writing, and shall specify what security, if any, the creditor holds for the payment of his claim, and when required by this Act, shall also contain an estimate by such creditor of the value of such security; and if the creditor holds no security, then it shall also be so therein stated. 20

Attestation of claims.

5. The claims shall be attested under oath, taken in Canada before any Judge, Commissioner for taking Affidavits, or Justice of the Peace; and out of Canada, before any Judge of a Court of Record, any Commissioner for taking Affidavits appointed by any Canadian Court, the Chief Municipal Officer of any Town or City, or any British Consul or Vice-Consul, or before any other person authorized by any statute of this Province for taking affidavits to be used in this Province. 25

Supplementary oath in certain cases.

6. Before the preparation of a dividend sheet, the assignee may require from any creditor a supplementary oath, declaring what amount, if any, such creditor has received in part payment of the debt upon which his claim is founded, subsequent to the making of such claim, together with the particulars of such payment; and if any creditor refuses to produce or make such oath before the assignee within a reasonable time after he has been required so to do, he shall not be collocated in such dividend sheet. 30 35

Claims secured by hypothec or privilege.

7. If, in Lower Canada, any claim be secured by *hypothec* upon the real estate of the insolvent, or if it consist of any *hypothec* or *privilege* upon such real estate, or any part thereof, the nature of such *hypothec* or *privilege* shall be summarily specified in such claim; but unless such claim be filed with the assignee, with the deeds and documents in support thereof, within six days from the day of sale of the property affected thereby; or if not, unless leave to file the same be afterwards obtained from the Judge upon special cause shewn, previous to the distribution of the proceeds of such real estate, or unless a dividend upon such claim has been reserved by the assignee, such claim shall not be entitled to any preferential collocation upon the proceeds of such real estate. 40 45

Affidavits.

8. Any affidavit required under this Act may be made by the party interested, or by his agent in that behalf, having a personal knowledge of the matter therein stated. 50

Notices of proceedings.

9. One clear day's notice of any petition, motion, or rule shall be sufficient, if the party notified resides within fifteen miles of the place where the proceeding is to be taken, and one extra day shall be sufficient allowance for each additional fifteen miles of distance between the place of service and the place of proceeding; and service of such notice shall be made in such manner as is now prescribed for similar services in that section of the Province within which the service is made. 55

10. The Judge shall have the same power and authority in respect of the issuing and dealing with commissions for the examination of witnesses, as are possessed by the ordinary Courts of Record in the section of the Province in which the proceedings are being carried on. Commissions for examination of witnesses.

5 11. All rules, orders and warrants, issued by any Judge or Court in any matter or proceeding under this Act, may be validly served in any part of this Province upon the party affected or to be affected thereby; and the service of them or of any of them may be validly made in such manner as is now prescribed for similar services in that part of the Province within which the service is made. And the person charged with such service shall make his return thereof and on oath, or if a Sheriff or Bailiff in Lower Canada, may make such return under his oath of office. Service of process throughout the whole Province.

15 12. The 4th, 5th, 7th, 8th, 9th, 10th, 11th and 13th clauses of cap. 79 of the Consolidated Statutes of Canada shall apply to proceedings under this Act; and the whole of cap. 80 of the said Consolidated Statutes shall also apply to proceedings under this Act, in the same manner and to the same extent as to proceedings before Courts of Record in Upper and Lower Canada. Certain sections of Cap. 79 Consolidated Statutes Canada to apply.

20 13. The forms appended to this Act or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided. But in every petition, application, motion, contestation, or other pleading under this Act, the parties may state the facts upon which they rely in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life shall apply. And no allegation or statement shall be held to be insufficiently made, unless by reason of any alleged insufficiency, the opposing party be misled or taken by surprise. Forms.

30 14. The rules of procedure as to amendments of pleadings, which are in force at any place where any proceedings under this Act are carried on, shall apply to all proceedings under this Act. And any Judge before whom any such proceedings are being carried on shall have full power and authority to apply the appropriate rules as to amendments, to the proceedings so pending before him. And no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended under the rules and practice of the Court. Amendments of proceedings.

40 15. The death of the insolvent, pending proceedings upon a voluntary assignment or in compulsory liquidation shall not affect such proceeding, or impede the winding up of his estate. And his heirs or other legal representatives may continue the proceedings on his behalf to the procuring of a discharge, or of the confirmation thereof, or of both. Effect of death of insolvent pending proceedings.

45 16. The costs of the action to compel compulsory liquidation shall be paid by privilege as a first charge upon the assets of the insolvent; and the costs of the judgment of confirmation of the discharge of the insolvent, or of the discharge if obtained direct from the Court, and the costs of winding up the estate, being first submitted at a meeting of creditors, and afterwards taxed by the Judge, shall also be paid therefrom. Costs of action to compel compulsory liquidation.

50 17. In Lower Canada rules of practice for regulating the due conduct of proceedings under this Act before the Court or Judge, and tariffs of fees for the officers of the Court, and for the Advocates and Attorneys practising in relation to such proceedings, shall be made forthwith after the passing of this Act, and when necessary repealed or amended, and shall be promulgated under and by the same authority and in the same manner as the rules of practice and tariff of fees of the Superior Court for Lower Canada: and shall apply in the same manner and have the same effect in respect of the proceedings under this Act, as the rules of practice and tariff of fees of the Superior Court apply to and affect the proceedings before that Court. And bills of costs upon proceedings Rules of practice and tariff of fees in Lower Canada.

under this Act, may be taxed and proceeded upon in like manner as bills of costs may now be taxed and proceeded upon in the said Superior Court.

Rules and tariffs in Upper Canada.

18. In Upper Canada the Judges of the Superior Courts of Common Law, and of the Court of Chancery, or any five of them of whom the Chief Justice of Upper Canada, or the Chancellor, or the Chief Justice of the Common Pleas shall be one, shall have power to frame and settle such forms, rules and regulations as shall be followed and observed in the proceedings on Insolvency under this Act as they may deem to be necessary, and to fix and settle the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to Attorneys, Solicitors, Counsel, Officers of Courts, whether for the Officer or for the Crown, as a fee for the Fee Fund or otherwise, Sheriffs, Assignees, or other persons whom it may be necessary to provide for.

GENERAL PROVISIONS.

Rights of unpaid vendor *Coutume de Paris*, restricted.

13. In all cases of sales of merchandise to a trader in Lower Canada subsequently becoming insolvent, the exercise of the rights and privileges conferred upon the unpaid vendor, by the 176th and 177th articles of the *Coutume de Paris*, is hereby restricted to a period of fifteen days from the delivery of such merchandise.

Marriage contracts of traders to be registered within a certain period.

2. In Lower Canada, every trader who marries, having previously executed a contract of marriage by which he gives, or promises to give or to pay, or cause to be paid, to his wife, any property or effects, or any sum of money, shall cause such contract of marriage to be enregistered in the Registration division in which he has his place of business, within thirty days from the execution thereof; and every trader already married, having such a marriage contract with his wife, shall enregister the same as aforesaid, if it be not there already enregistered, within three months from the passing of this Act; and every person not a trader, but hereafter becoming a trader, and having such a contract of marriage with his wife, shall cause such contract to be enregistered, as aforesaid, (if it be not previously there enregistered), within thirty days from becoming such trader. And in default of such registration the wife shall not be permitted to avail herself of its provisions in any claim upon the estate of such insolvent for any advantage conferred upon or promised to her by its terms; nor shall she be deprived by reason of its provisions of any advantage or right upon the estate of her husband, to which, in the absence of any such contract, she would have been entitled by law.

In default of such registration.

Judgments in actions *en separation de biens*.

3. No judgment shall be rendered against any trader in Lower Canada in any action against him by his wife *en separation de biens*, or *en separation de corps et de biens*, unless the institution of such action is advertized continuously for one month in the *Canada Gazette*, and in two newspapers published in or nearest to the place of residence of such trader, one in French, the other in English: nor unless such action be brought in the district within which the defendant has his domicile: And any creditor of the defendant in any such suit may intervene therein for the purpose of examining such debtor respecting his estate and effects, without becoming liable for any costs either to the plaintiff or to the defendant, and may also intervene therein, and oppose the demand of the plaintiff, or subsequently contest the validity of any judgment rendered therein, subject to the ordinary rule as to costs.

Interpretation "the Judge."

4. The words "the Judge" shall, in Lower Canada, signify a Judge of the Superior Court for Lower Canada, having jurisdiction at the domicile of the insolvent—and in Upper Canada a Judge of the County Court of the county or union of Counties in which the proceedings are carried on, and the words, "the Court" shall, in Lower Canada signify the said Superior Court—and in Upper Canada the County Court unless

"Court."

it it otherwise expressed or unless the context plainly requires a different construction; But the 24th and 25th sections of the 78th chapter of the Consolidated Statutes for Lower Canada, shall apply in Lower Canada to proceedings under this Act.

- 5 5. The word "Assignee" shall mean the official assignee appointed in proceedings for compulsory liquidation as well as the assignee appointed under a deed of voluntary assignment. The word "day" shall mean a juridical day. The word "Creditor" shall be held to mean every person to whom the Insolvent is liable, whether primarily or secondarily, and whether as principal or surety; but no debt shall be doubly represented or ranked for, either in the computation for ascertaining the numbers and proportions of creditors, or in the allotment or payment of dividends; the word "collocated" shall mean ranked or placed in the dividend sheet for some dividend or sum of money:
- 10 10. And all the provisions of this Act respecting traders, shall be held to apply equally to unincorporated trading companies, and co-partnerships; and the chief office, or place of business of such unincorporated trading companies and co-partnerships shall be their domicile for the purposes of this Act.
- 15 15. Every assignee to whom an assignment is made under this Act and every official assignee appointed under the provisions of this Act, is an agent within the meaning of the 43rd, 44th, 46th, 48th and 49th sections of the 92nd chapter of the Consolidated Statutes of Canada; and every provision of this Act, or resolution of the creditors, relating to the duties of an assignee or official assignee shall be held to be a direction in writing, within the meaning of the said 43rd section of the said chapter. And in an indictment against an assignee or official assignee under any of the said sections, the right of property in any monies, security, matter, or thing, may be laid in "the creditors of the insolvent, (*naming*
- 20 20 *him*,] under the Insolvent Act of 1863," or in the name of any assignee subsequently appointed, in his quality as such assignee.
- 25 25. The deed of assignment, or an authentic copy thereof, or a duly authenticated copy of the order of the judge appointing an official assignee, or a duly certified extract from the minutes of a meeting of creditors, according to the mode in which the assignee or official assignee is alleged to be appointed, shall be *prima facie* evidence in all courts, whether civil or criminal, of such appointment, and of the regularity of all proceedings at the time thereof and antecedent thereto.
- 30 30. One per centum upon all moneys proceeding from the sale by an Assignee under the provisions of this Act, of any immovable property in Lower Canada, shall be retained by the Assignee out of such moneys, and shall by such assignee be paid over to the Sheriff of the District, or of either the Counties of Gaspé or Bonaventure, as the case may be, within which the immovable property sold shall be situate, to form part of the Building and Jury Fund of such District or County.
- 35 35. The Governor in Council shall have all the powers with respect to imposing a tax or duty upon proceedings under this Act, which are conferred upon the Governor in Council by the 32nd and 33rd sections of the 109th chapter of the Consolidated Statutes for Lower Canada, and by the Act intituled, An Act to make provisions for the erection or repair of Court Houses and Gaols at certain places in Lower Canada, [12 Vic., Cap. 112.]

"Assignee."
"Day."

"Creditors."

"Collocated."

Application of this Act to unincorporated trading companies.

Assignee to be an agent within the meaning of Consolidated Statutes of Canada, Cap. 92 sec. 43.

Deed of assignment, &c, to be *prima facie* evidence

Percentage from sales under this Act to form part of Building and Jury Fund.

Power of Governor to impose a tax on proceedings.

Short title.

14. This Act shall be called and known as "The Insolvent Act of 1863."

FORM A.

INSOLVENT ACT OF 1863.

The creditors of the undersigned are notified to meet at _____ in
 on _____ the _____ th day
 of _____ at eight o'clock _____ for the purpose of
 receiving statements of his affairs, and of naming an assignee to whom
 he may make an assignment, under the above Act.

(Domicile of debtor and date).

(Signature).

(The following is to be added to the notices sent by post).

The creditors holding direct claims and indirect claims, maturing
 before the meeting, for \$100 each and upwards, are as follows: (names
 of creditors and amount due) and the aggregate of claims under \$100 is
 \$ _____

(Domicile of debtor and date).

(Signature)

FORM B.

INSOLVENT ACT OF 1863.

In the matter of A. E., an insolvent.
 Schedule of Creditors.

1. Direct Liabilities.

Name.	Residence.	Nature of Debt.	Amount.	Total.
2. Indirect liabilities, maturing before the day fixed for the first meeting of creditors.				
Name.	Residence.	Nature of Debt.	Amount.	
3. Indirect liabilities, maturing after the day fixed for the first meeting of creditors.				
Name.	Residence.	Nature of Debt.	Amount.	
4. Negotiable paper, the holders of which are unknown.				
Date.	Name of maker.	Names liable to Insolvent.	When due.	Amount.

PROVINCE OF CANADA, }
 DISTRICT (or County) }

"Insolvent Act of 1863."

I, A. B., the above named insolvent, being duly sworn, depose and say :

1. That to the best of my knowledge and belief, and according to my books, the above schedule contains a true and correct list of my liabilities, according to its purport, and that each of such liabilities is correctly classified therein.

2. That all the above mentioned liabilities are honestly due by me, and that none of them were created or have been increased with the intention of giving to the creditor thereof any advantage either in voting at meetings of creditors, or in ranking on my estate. And I have signed,
 Sworn before me at this
 day of 186

FORM C.

INSOLVENT ACT OF 1863.

This assignment made between first part, and witnesses, of the second part,

On this day of (or
 Before the undersigned notaries came and appeared of the first part, and of the second part, which said parties declared to us Notaries.)

That under the provisions of "the Insolvent Act of 1833" the said party of the first part, being insolvent, has voluntarily assigned and hereby does voluntarily assign to the said party of the second part, accepting hereof as assignee under the said Act, and for the purposes therein provided, all his estate and effects real and personal of every nature and kind whatsoever.

To have and to hold to the party of the second part as assignee for the purposes and under the Act aforesaid.

And a duplicate of the list of creditors exhibited at the first meeting of his creditors, by the said party of the first part is hereto annexed.

In witness whereof, &c.

or

Done and passed, &c.

FORM D.

INSOLVENT ACT OF 1863.

In the matter of

A. B. (or A. B. & Co.)
 an Insolvent.

The creditors of the insolvent are notified that he has made an assignment of his estate and effects, under the above Act, to me the undersigned assignee, and they are required to furnish me, within two months from this date, with their claims, specifying the security they hold, if any, and the value of it; and if none, stating the fact: the whole attested under oath, with the vouchers in support of such claims.

(Place date)

Signature of assignee.

ers, and all the office and business papers and documents of every kind and nature whatsoever of and belonging to if the same shall be found in (*name of district or of other territorial jurisdiction,*) and the same so attached, safely to hold, keep and detain in your charge and custody, until the attachment thereof, which shall be so made under and by virtue of this Writ, shall be determined in due course of Law.

We command you also to summon the said to be and appear before Us, in our Court for at in the County (*or District*) of on the day of then and there to answer the said

of the plaint contained in the declaration hereto annexed, and further to do and receive what, in our said Court before Us, in this behalf shall be considered; and in what manner you shall have executed this Writ, then and there, certify unto us with your doings thereon, and every of them, and have you then and there also this Writ.

IN WITNESS WHEREOF, we have caused the Seal of our said Court to be hereunto affixed, at aforesaid, this day of in the year of our Lord, one thousand eight hundred and sixty in the

(FORM H.)

INSOLVENT ACT OF 1863.

A. B.,
Plff.
vs.
C. D.,
Deft.

A writ of attachment has issued in this cause, of which all persons interested in the estate of the defendant, and all persons having in their possession, custody or power any portion of the assets of the defendant, or who are in any way indebted to him are required to take notice.
(Place date.)

(Signature,) Sheriff.

(FORM I.)

INSOLVENT ACT OF 1863.

I swear that I (*or the firm of which I am a member, or A. B. of whom I am duly authorized agent in this behalf,*) am (*or is*) a creditor of the Insolvent, and that I will give my advice in the appointment of an assignee to his estate, honestly and faithfully and in the interest of his creditors generally.

(FORM K.)

INSOLVENT ACT OF 1863.

In the matter of

A. B. (or A. B. & Co.),

An Insolvent.

The Creditors of the insolvent are notified that I, the undersigned, (*name and residence*), have been appointed official assignee of his estate and effects: and they are required to produce before me within two months from this date, their claims upon the said estate under oath, specifying the security they hold, if any, and the value of it, and if none, stating the fact; with vouchers in support of such claims.

(Place date.)

(Signature,)

Official Assignee.

(FORM L.)

INSOLVENT ACT OF 1863.

In the matter of A. B., an Insolvent.

In consideration of the sum of \$ _____ whereof quit; C. D. assignee of the Insolvent, in that capacity hereby sells and assigns to E. F. accepting thereof, all claim by the Insolvent against G. H. of (*describing the debtor*) with the evidences of debt and securities thereto appertaining, but without any warranty of any kind or nature whatsoever.

C. D. Assignee.

E. F.

(FORM M.)

This deed, made under the provisions of the Insolvent Act of 1863, the _____ day of _____ &c., between A, B., of _____ &c., in his capacity of assignee of the estate and effects of an insolvent, under a deed of assignment executed on the _____ day of _____ at _____ in _____ Canada, (or under an order of the Judge made at _____ on the _____ day of _____) of the one part, and C. D., of _____ &c., of the other part, witnesseth: That he, the said A. B., in his said capacity, hath caused the sale of the real estate hereinafter mentioned to be advertised in the *Canada Gazette* from the _____ day of _____ to the _____ day of _____ inclusive, and hath adjudged and doth hereby grant, bargain, sell and confirm the same, to wit: unto the said C. D., his heirs and assigns for ever, all (*in Upper Canada insert "the rights and interests of the Insolvent in"*) that certain lot of land, &c., (*insert here a description of the property sold*): To have and to hold the same, with the appurtenances thereof, unto the said C. D., his heirs and assigns for ever. The said sale is so made for and in consideration of the sum of \$ _____ in hand paid by the said C. D. to the said A. B., the receipt whereof is hereby acknowledged (or of which the said C. D. hath paid to the

said A. B. the sum of _____ the receipt whereof
 is hereby acknowledged) and the balance or sum of \$
 the said C. D. hereby promises to pay the said A. B., in his said capa-
 city, as follows, to wit—(here state the terms of payment)—the whole
 with interest payable
 and as security for the payments so to be made, the said C. D. hereby
 specially mortgages and hypothecates to and in favor of the said A. B.
 in his said capacity, the lot of land and premises hereby sold. Wit-
 ness,

A. B. (L. S.)
 C. D. (L. S.)

Signed, sealed and delivered
 in the presence of
 B. F.,

(FORM N.)

INSOLVENT ACT OF 1868.

In the matter of

A. B. (or A. B. & Co.,)

An Insolvent.

The Creditors of the insolvent are notified that a dividend sheet has
 been prepared, and will remain open to inspection and objection, at my
 office (*describing it*) every day between the hours of ten and five o'clock
 until the _____ day of _____ after which the
 dividends therein allotted will be paid.

FORM O.)

INSOLVENT ACT OF 1863.

Province of Canada, } In the (name of Court)
 District (or County) of } In the matter of A. B. (or A. B. &
 Co.,) An Insolvent.

Notice is hereby given that the undersigned has filed in the office of
 this Court, a consent by his creditors to his discharge (*or a deed of com-
 position and discharge, executed by his creditors*), and that on
 the _____ day of _____ next, at ten of the clock in the
 forenoon, or as soon as counsel can be heard, he will apply to the said
 Court (*or to the Judge of the said Court as the case may be*) for a con-
 firmation of the discharge thereby effected in his favor, under the
 said Act.

(Place _____ date.)
 (Signature of Insolvent, or of his Attorney *ad litem*.)

FORM P.

INSOLVENT ACT OF 1863.

Province of Canada, } In the (name of Court)
 District (or County) of } In the matter of A. B., An Insolvent.

Notice is hereby given that the undersigned creditor of the insolvent
 has required him to file in the office of this Court, the consent of his

creditors, or the deed of composition and discharge executed by them, under which he claims to be discharged under the said Act; and that on the _____ day of _____ next, at ten of the clock in the forenoon, or as soon as counsel can be heard, the undersigned will apply to the said Court (or to the Judge of the said Court, as the case may be) for the annulling of such discharge.

(Place. _____ date.)

(Signature of Insolvent or of his Attorney *ad litem*).

FORM Q.

INSOLVENT ACT OF 1863.

PROVINCE OF CANADA, | In the (name of Court)
 District (or County) of | In the matter of A. B. (or A. B. & Co.),
 An Insolvent.

Notice is hereby given that on _____ the _____ day of _____ next, at ten of the clock in the forenoon, or as soon as counsel can be heard, the undersigned will apply to the said Court, (or to the Judge of the said Court, as the case may be,) for a discharge under the said Act.

(Place _____ date.)

(Signature of Insolvent or of his Attorney *ad litem*.)

FORM R.

INSOLVENT ACT OF 1863:

—In the matter of
 A. D.,
 An Insolvent, and
 C. D.,
 Claimant.

I, C. D., of _____, being duly sworn in
 depose and say:

1. I am the claimant (or the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to, or a member of the firm of _____ claimants in the matter, and the said firm is composed of myself _____ and of E. F. of _____),

2. The insolvent is indebted to me (or to the claimant) in the sum of _____ dollars, for (here state the nature and particulars of the claim, for which purpose reference may also be made to accounts or documents annexed.)

3. I (or the claimant) hold no security for the claim, (or I or the claimant holds the following, and no other, security for the claim, namely: (state the particulars of the security.)

To the best of my knowledge and belief, the security is of the value of _____ dollars.

Sworn before me at _____ } _____ And I have signed.
 this _____ day of _____ }